Filed 1/14/19 Marriage of Mhanna and Hage CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re the Marriage of FIDA MHANNA and GHASSAN HAGE.	H044493 (Santa Clara County Super. Ct. No. 6-13-FL010520)
FIDA MHANNA, Respondent, v. GHASSAN HAGE, Appellant.	

This appeal is from a February 2017 postjudgment order denying the request by appellant Ghassan Hage (father) to modify a prior custody and visitation order. Father and respondent Fida Mhanna (mother) have two girls, M. and C., who were seven and five years old, respectively, at the time of the hearing. Mother and father had previously stipulated in 2014 to joint legal and physical custody of the children; father sought a modification order under which he would have been awarded sole legal and physical custody.

Father contends the trial court erred. Because we conclude the trial court did not abuse its discretion, we will affirm the order.

I. PROCEDURAL HISTORY

Mother filed a petition for dissolution of her marriage with father on a date unknown. The parties separated in May 2013. A judgment of dissolution was filed on October 23, 2014.

On March 1, 2016, father filed a request for order modifying custody and visitation concerning the children (hereafter request).[1] He sought modification of an order dated April 15, 2014,[2] which, as recited by father, had provided that: "Father shall have children every Monday at the end of school to Wednesday end of school, Mother shall have children at the end of school to Friday end of school. [Parents] will have alternating weekends[;] when school is not in session[,] the exchange shall occur at 9:00 a.m." Father requested that the custody and visitation order be modified to provide as follows: "79% to [father] and 21% to [mother] . . . (Kids will be with their father during all school days and the kids will be with [mother] every other weekend, both parent[s] share ½ holidays and ½ summer vacation. . . .)"[3]

An evidentiary hearing on father's request occurred on January 24 and 25, 2017. At the hearing, father, upon questioning by the court, clarified that he was seeking a modification from joint physical and legal custody to his having sole physical and legal custody of the children. During argument, counsel for mother asserted that father had

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[1] A previous request by father to modify custody and visitation filed in May 2015 was taken off calendar at father's request.

[2] During closing argument at the hearing on father's request, mother's counsel represented to the court that the parties in mid-2014, while both sides were represented by counsel, had entered into a stipulation to resolve custody and visitation issues. The record does not include a copy of the April 15, 2014 order that is the subject of father's modification request, a document that may be significant in resolving the issues in this appeal. It is father's burden, as appellant, to show reversible error by an adequate record. (See *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

[3] The record reflects that, in addition to the request for order and accompanying declaration, father filed a trial brief with voluminous exhibits in support of the request. There is no indication that mother filed any responsive papers.

presented no circumstances warranting modification of custody and visitation. Mother's counsel affirmatively requested that mother be given decisionmaking authority concerning the children's educational and medical needs.

After submission of the cause, the court on February 7, 2017, filed its findings and order (hereafter the order). The court denied father's request, concluding that he had not met his burden of proof to warrant modifying the existing custody and visitation order. The court further granted the affirmative relief requested by mother. It ordered that mother and father should act in good faith to attempt to resolve disputes concerning the educational and medical needs of their children, but that if such disputes were not resolved, mother would have the final authority over such decisions. In support of such order, the trial court found that (1) "there have been numerous disputes between the parties over educational issues for the children"; (2) "[f]ather is very controlling of [educational] and other issues"; (3) "[f]ather, based upon all of the evidence, clearly views his decisions are always the best ones and that he should be totally in charge of the final decisions[and t]he evidence does not support [his opinion]"; (4) "the parties have also had a number of issues where they could not agree on how to resolve disputed health care issues"; and (5) "[f]ather's contentions that [m]other is not capable of handling the children's medical needs is not supported by credible evidence."

Father filed a timely notice of appeal from the order. (See *In re Marriage of Lasich* (2002) 99 Cal.App.4th 702, 705, fn. 1 [postjudgment custody order appealable under Code Civ. Proc., § 904.1, subd. (a)(2)], disapproved on other grounds by *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1097.)

II. DISCUSSION

A. Standard of Review

Father, without citation to apposite authority, contends that the applicable standard of review of the order here is whether it is supported by substantial evidence. He is incorrect.

An appellate court reviews custody and visitation orders under "the deferential abuse of discretion test. [Citation.] The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the 'best interest' of the child. [The reviewing court is] required to uphold the ruling if it is correct on any basis, regardless of whether such basis was actually invoked. [Citation.]" (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) The appellant bears the burden of demonstrating that the trial court abused its discretion. (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 16.) And an "order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.)

B. Noncompliance with Procedural Rules

Before addressing the merits of this appeal, we note that father has failed to comply with applicable rules of appellate procedure. This noncompliance consists of his failure to (1) include proper citations to the record in his appellate briefs, and (2) adequately develop legal arguments in those appellate briefs.

1. Proper Citations to the Record

Father's opening brief and reply brief are replete with unsupported statements of specific factual and procedural matters upon which he bases his appeal. For instance, in the procedural history section of his opening brief, father states a number of facts, and references a judgment, restraining order litigation, and another lawsuit, without including any citations to the record to support such matters. Similarly, father fails to include citations to the record to support certain facts and procedural matters stated in his reply brief.

Father's failure to include citations to the record in his appellate briefs constitutes a violation of rule 8.204(a)(1)(C) of the California Rules of Court,[4] which requires that

[4] All further rule references are to the California Rules of Court.

every brief "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." "When an appellant's brief makes no reference to the pages of the record where a point can be found, an appellate court need not search through the record in an effort to discover the point purportedly made. [Citations.] We can simply deem the contention to lack foundation and, thus, to be forfeited. [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 406-407.) A further difficulty is presented by father's failure to include citations to the record in support of facts raised in his appellate briefs. Without proper citation to the record, this appellate court is at a loss to know whether the facts identified by the party were actually part of the record below, or are extraneous matters raised by the litigant that were not before, and thus not considered, by the trial court. "Factual matters that are not part of the appellate record will not be considered on appeal and such matters should not be referred to in the briefs." (*Lona v. Citibank, N.A.* (2011) 202 Cal.App.4th 89, 102 (*Lona*); see rule 8.204(a)(2)(C) [appellant's opening brief must provide "summary of the significant facts limited to matters in the record"].) We will therefore disregard father's factual contentions and any references to procedural matters below for which he has failed to provide citations to the record. (*Yeboah v. Progeny Ventures, Inc.* (2005) 128 Cal.App.4th 443, 451 (*Yeboah*).)[5]

2. *Undeveloped Legal Arguments*

Father in his appellate briefs makes a number of general assertions regarding his contention that the court erred. His position is in essence that the trial court failed to

[5] We note that mother, who is represented by counsel, also failed to comply with rule 8.204(a)(1)(C). In respondent's brief, mother recites several procedural matters, including matters that preceded the filing of father's request, without citation to the record. We will likewise disregard any references in mother's brief to procedural matters for which there is no citation to the record. (*Yeboah*, *supra*, 128 Cal.App.4th at p. 451.)

consider the evidence he presented supporting his request for a modification of custody and visitation. His briefs include no case authority in support of his argument.

"Conclusory assertions of error are ineffective in raising issues on appeal. [Citation.]" (*Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 523, citing rule 8.204(a)(1)(B).) Further, the failure to cite legal authority for a position in an appellate brief "amounts to an abandonment of the issue." (*People ex. rel. 20th Century Ins. Co. v. Building Permit Consultants, Inc.* (2000) 86 Cal.App.4th 280, 284.) As a panel of this court has explained: "We are not bound to develop appellants' argument for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived." (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

3. *Conclusion Regarding Procedural Noncompliance*

As we discuss below, father has failed to meet his burden of demonstrating error. His failure to include citations to the record in support of the assertions of fact and discussion of procedural matters renders it difficult for this court to assess the merits of his contentions. (*In re S.C.*, *supra*, 138 Cal.App.4th at pp. 406-407.) And because of father's failure to develop his arguments with proper citation to legal authority to support them, we could treat the arguments as having been waived. (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830.)

We acknowledge that father is representing himself in this appeal and has not had the formal legal training that would be beneficial in advocating his position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is appearing in propria persona, he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247 [self-represented litigants are required to follow correct rules of procedure].)

In the interests of justice, we will overlook father's noncompliance with the rules of appellate procedure and address the merits of his appeal. In doing so, however—recognizing that it is inappropriate for us to consider factual matters alluded to by the litigants that were not part of the record below (*Lona*, *supra*, 202 Cal.App.4th at p. 102; rule 8.204(a)(2)(C))—we will disregard any unsupported allegation of fact in father's appellate briefs for which we find no support in the record before us.

C. No Abuse of Discretion in Exclusion of Evidence

Father appears to challenge the court's rulings excluding certain evidence he argues was relevant to his position below regarding visitation and custody. In his opening brief, father identifies several items of documentary evidence excluded by the trial court: (1) a pediatrician after-visit summary for M. (exhibit A); (2) a judicial custody conference statement concerning care provided to M. (exhibit D); (3) a pediatrician after-visit summary for M. (exhibit E); and (4) a police report concerning an alleged domestic violence incident in October 2012 (exhibit B1). As discussed below, three of these documents were excluded on hearsay grounds. Although father does not include specific argument stating the legal grounds upon which he claims these evidentiary rulings were erroneous—and therefore has forfeited any such challenge (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4)—we will nonetheless address these rulings in the interests of reaching the merits of the appeal.

Father sought to introduce exhibit A, a pediatrician's after-visit summary dated February 10, 2016, concerning medical treatment of M. Mother's hearsay objection to introduction of the summary was sustained by the court. Similarly, father attempted to introduce exhibit E, a pediatrician's after-visit summary concerning medical treatment of M., dated May 27, 2014. Mother objected on hearsay grounds, and the court sustained the objection. And father attempted to introduce exhibit B1, a police report received September 7, 2014, pertaining to an alleged domestic violence incident on October 22, 2012. The court sustained mother's hearsay objection.

The three excluded exhibits were plainly hearsay. (Evid. Code, § 1200, subd. (a); see also *In re Miller* (2006) 145 Cal.App.4th 1228, 1240-1241 [witness statements in medical records held inadmissible hearsay]; *Gananian v. Zolin* (1995) 33 Cal.App.4th 634, 640 [hearsay rule applicable to police reports].) Father offered no recognized exception to the hearsay rule. Exhibits A, E, and B1 were properly excuded by the court.

Father also sought to introduce exhibit D, a judicial custody conference statement he signed that was dated October 16, 2015, concerning his testimony regarding the care—specifically, administration of medications—given by mother to M. The court refused to admit the document, noting that the statement was not made under oath, but permitted father to testify concerning the subject that he had presented in the statement. There was no error in the exclusion of exhibit D. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 11 [unsworn statements "are not evidence"].)

D. No Abuse of Discretion in Denying Modification Request

Father contends that the court erred in denying his request because it disregarded a variety of evidence he had presented. There were four general categories of complaints identified by father at the hearing concerning mother's parenting of the children that formed the basis for his contention that the existing custody and visitation order should be modified: (1) attention to medical care and treatment; (2) involvement in the children's education; (3) instances of neglect and disregard for the children's welfare; and (4) acts taken to alienate the children from their father.

Below, we will identify and discuss many of these evidentiary matters raised by father at the hearing, followed by a discussion of other evidence submitted on behalf of mother.

1. *Medical Care and Treatment*

Father identified in his testimony several incidents in which he claimed that mother did not give proper medical care to the children.

One incident occurred on or about February 8, 2016, described generally in father's opening brief as mother having "thr[own] our daughter in school [*sic*] when she needed emergency treatment." Father testified that mother dropped M. off at school the morning of February 8, 2016, even though she was sick and had previously been vomiting at home. (M. was diagnosed with asthma sometime prior to the parties' separation in 2013.) Father was called by the school and had to rush to pick M. up. After measuring M.'s oxygen level and determining it was low, father took her to the doctor. The doctor advised that vomiting could be evidence of poor breathing, and the doctor prescribed albuterol. Father later asked mother why she had not taken care of M., and she responded that it was father's custody day.

Concerning this February 2016 illness, mother testified that M. had awakened that Monday morning not feeling well and was coughing. Monday was father's custody day. Mother called father to tell him that M. could not go to school and asked him to pick her up; he did not answer, so mother sent him a text message. M. also called father and left him a voice mail message asking him to pick her up. Because father did not respond, and because mother could not take off from her job (where she had been employed for less than two weeks), mother decided the safest place for M. was at school. Mother talked to M.'s teacher, explained that M. was ill, and asked the school office to contact father because he had not answered mother's calls.

Another health care matter described by father in his testimony and discussed at some length in his opening brief arose beginning on or about February 29, 2016. Mother had dropped off C. at school in the morning, and when father picked her up at noon, she had a high fever. It was determined after testing that C. had strep throat. On March 7, 2016—one week after C. had become ill—M. also showed strep symptoms when father

picked her up from school. Father suspected that M. had contracted strep from mother, claiming that M. and C. both told him that mother had kissed them on their mouths.[6]

With respect to this health matter, Mother testified that when M. and C. were sick with strep throat in February-March 2016, father had asked her to be tested for the disease. Mother told him she was willing to be tested but that she did not have health insurance and asked him to pay for the test. Father was unwilling to pay for the test; further, he did not offer to have himself or his mother tested for strep throat.

Father also testified that mother on some occasions had not attended medical appointments for the children when he had advised her in advance of the date and time for them. Specifically, mother had not attended appointments in 2016 on February 29, March 1, March 2, and October 7.

Mother testified that before she began working, she had taken her daughters to medical appointments by taxi, since she did not have a car. After she became employed, father would often make medical appointments for the children without communicating with mother in advance to determine her availability. And, sometimes, father gave mother little advance notice so that she would not be able to attend.

2. *Education*

As a general category, father in his opening brief noted that he had presented unchallenged "[e]vidence [of k]ids education negligence [*sic*]." At the hearing, father testified generally as a complaint concerning mother's parenting that she "does not emphasize . . . the kids' education" and she "does not follow up on their homework." He testified that mother had not attended some of the parent-teacher conferences at the children's schools. He stated there had been five or six instances in the prior year and

[6] Although mother's attorney did not specifically object to this testimony, it is apparent that the trial court disregarded it by noting that it was hearsay. Like the documentary evidence excluded by the court on hearsay grounds discussed, *ante*, this testimony was inadmissible hearsay.

one-half, and identified two dates—in February and October 2016—in which mother had not attended parent-teacher conferences for both children.

Mother testified in response that M. had received homework packets from her school every Monday and was required to return the completed work by Friday. Mother, pursuant to the custody schedule, received the children on Wednesday; sometimes, M. had not done any homework on Monday and Tuesday. Mother testified that she sat with M. sometimes for one or two hours while she did her homework, so that it was completed by Friday (which was generally mother's custody day). Mother testified that she had regularly attended parent-teacher conference at the school her daughters had previously attended. She stated that she had missed the conference in February 2016 because father had given her the wrong date and time for it.

Father also testified that mother did not support the children with their piano lessons. Mother responded that she had no issue with her daughters taking piano lessons. She testified that father did not schedule the lessons during her custodial time. Additionally, father did not invite mother to the children's piano recitals. Mother testified that C. had a recital shortly before the hearing. Before the recital mother had asked father when it was, he said he had forgotten; he did not get back to mother with the time of the recital.

Father testified further that mother had not provided support for the children's participation in Tae Kwon Do classes. Mother responded in her testimony that father had not advised her of their daughters' Tae Kwon Do competitions if they had not occurred during mother's custodial time. Mother testified that on one occasion, she had attended a Tae Kwon Do class to watch the children. Father was upset, and he told mother that she should not come to the class and that it was not her custody day.

3. *Alleged Neglect/Disregard for Children's Welfare*

Father testified that there was an incident on November 4, 2016 (approximately two months before the hearing) in which mother had failed to pick up C. from school on mother's custody day. The school called father, and he picked up C.

Mother testified that the Mountain View school where C. attended kindergarten was approximately five minutes from father's home. Mother had agreed to the school because her preferred school would only place C. in pre-K. During mother's custody days, she took Uber to drop off her daughters at school and pick them up in the afternoons. Mother testified that when she had agreed to the Mountain View school, she had discussed with father the fact that there were no openings for after-school care for C., and that father would on occasion need to pick up the children from school on days that mother could not leave work early. November 4, 2016, was one of those days. Mother sent several text messages to father, beginning in the morning, asking him to pick up the children; he did not respond, and mother was unable to leave work.

Father also testified to an incident occurring more than four years before the hearing, on October 22, 2012, involving alleged domestic violence in which mother attacked father in front of the children. He stated that during the incident, mother had threatened to bankrupt him. When father started to record this threat, mother physically attacked him, ripping his shirt. Father did not file a police report at the time. But later, mother had sought a restraining order as a result of the incident; father testified that mother "twisted the truth" to mislead the police. Father argued in his opening and reply briefs that the trial court had failed to consider this evidence of alleged domestic violence.

Mother testified that before she and father had separated, whenever they had an argument, father "use[d] to take a video recorder and without my agreement he wanted to record everything . . . because he said he was going to use it against me later . . . in court." Mother testified that during this October 2012 incident, she had not wanted father

recording their argument, and she had tried to take the video recorder from him. In doing so, she had "accidentally ripped his shirt."

4. *Alleged Alienation*

Father asserted at trial that mother had caused "alienation" of the children toward, among others, father. He testified that his daughters had kicked him four or five times in several months before trial. He discussed it with mother, and she said that they had also kicked her. Father did not provide specific evidence explaining why he believed mother was responsible for the children's behavior toward him.[7]

Father testified that mother, on several occasions, had taken the cell phones from the children to prevent them from calling him. Mother testified in response that her daughters sometimes asked to speak with their father and mother allowed them to do so. Both children had cell phones. She stated that there was one occasion where, after the children had had a fight and one had struck the other, mother had taken away their phones temporarily, thereby not permitting them to call father. Mother explained that the incident had occurred during her custody time, and she had felt she should be the parent to discipline the children rather than have them contact their father to seek his support. Mother denied that she had ever taken away the children's cell phones to punish them.

[7] In discussions that immediately followed father's testimony on this matter, the court asked father whether the children had seen a counselor or therapist. The court learned that there had been an order in June or July of 2016 that the children be seen by a therapist, but that they had not yet seen one. The court expressed concern about the delay in arranging for the children to see a therapist and ordered that father and mother's counsel be proactive in obtaining a referral for a therapist as soon as possible. The court incorporated into its order this requirement that immediate steps be taken to locate a therapist. Because father, during his testimony, had explained that he had been attempting to get a referral from Palo Alto Medical Foundation (Foundation), the court ordered father to follow up with the Foundation to obtain a referral by February 8, 2017, and if unsuccessful, he should then contact the Children's Health Council to seek a referral.

5. *Other Evidence*

In addition to responding to father's testimony, mother testified affirmatively concerning how the living environment with father was immediately prior to their separation. Mother testified that father controlled everything she did around the house, including how she raised the children and what she fed them. Mother testified that father isolated mother from her family and friends and "blam[ed her] for everything." She testified that "[he] need[ed] everything at home [his] way."

Mother described her parenting since the separation. She testified that she usually made homemade food for her daughters, generally Middle Eastern food. The children ate well and were in good health. She explained that while they had gotten sick more frequently when they were younger, their health had been better as they were growing up and their immune system was becoming stronger. The children sometimes misbehaved. Mother testified that she addressed the misbehavior differently as between the children; given their age difference, the same approach for both of them did not work. Her daughters previously had friends, including their neighbors, and students in their prior school. But the neighbors had moved, and after changing schools, the children did not have close friends. Mother testified that she anticipated that this would change and she encouraged her daughters to develop friendships. She testified that in the last year, she had allowed M. to invite a friend over for a play date; father disapproved and had told mother he did not want her invited again and did not want her to be M.'s friend.

Mother also testified that since the separation, father sometimes passed messages to her through the children on "[w]hat [mother] need[ed] to do with the kids during [mother's] custody schedule, what activities [she] need[ed] to do, what . . . [subjects she] need[ed] to teach them, [and] how long they should play." Mother testified that she had agreed that father could take the children on trips, sometimes outside the United States, as long as the children contacted her while they were away. On a trip to Lebanon in the summer of 2016, mother tried to contact the children every day through father by voice

mail, text message, and email; Mother was not able to speak with her daughters for the first 15 days of the trip.

Laurie Williams, a licensed marriage and family counselor for 35 years, testified that she had acted as a coparent counselor for mother and father and had met with them for approximately 20 sessions. She observed the children on three occasions—once on a home visit with mother and twice when father brought the children to her office. Williams was given no occasion to be concerned for the children's welfare. Her impression was that both mother and father were focused on the children's best interests, but that their respective views on that subject differed. Williams had not viewed one parent's view of the best interests of the children to be superior to the other parent's view. Williams also testified that she had not viewed any of father's complaints about mother's parenting that he had expressed during the sessions as having been substantiated.

During the sessions, Williams testified, mother had showed a very quiet demeanor and had "tried to participate [but she] had a difficult time doing that because she often didn't have a chance." Williams testified that this was because father had generally come "prepared with a list of questions he wanted to have answered," many concerning what extra schoolwork and activities mother was providing to the children. Williams said that mother "almost never got a chance to make any requests [of father] because [Williams and the parents] were focused on what [father] was requesting." Williams viewed father as "cooperative" "[i]f [mother] was willing to do what it was that [father] asked . . . [But i]f she was unwilling to do that then, no, [father] was not willing to accept the possibility that perhaps she had a different view."

Williams testified that it was her view that mother had made a sincere effort at coparenting with father but "she was almost totally unable to answer or do anything in the sessions." Her opinion was that father had not made a sincere effort to coparent with mother but thought "[father] believed that that's what he was doing." It was Williams's opinion that father and mother would never be able to successfully coparent the children.

Williams withdrew as the parties' coparent counselor in October 2016 because she concluded that what she was doing "was no longer effective."

Williams was asked her opinion about father's proposal to change the custody arrangements such that he would have sole custody of the children from Monday through Friday while school was in session. She opined that the change would be detrimental to the children as "they would miss out on . . . what [mother] provides to them during the . . . period of time that she has them in terms of her way of parenting, which is different than [father's]."

6. *Conclusion*

In reviewing the record to determine whether the court abused its discretion in denying father's request to modify the prior visitation and custody order with respect to the parties' children, we are mindful of the deference we must pay to the trial court. As explained by the Fourth District Court of Appeal in *Niko v. Foreman* (2006) 144 Cal.App.4th 344 (*Niko*), a case involving review of a child custody order: "All conflicts in the evidence are drawn in favor of the judgment. [Citation.] When supported by substantial evidence, we must defer to the trial court's findings. [Citation.] 'We may not reweigh the evidence or determine credibility. [Citation.]' [Citation.] 'Credibility is a matter within the trial court's discretion,' and the reviewing court must defer to the trial court's findings on credibility issues. [Citation.]" (*Id.* at pp. 364-365.)

The trial court found that father had not met his burden of proof justifying his request to modify the custody and visitation order. Although father presented evidence that he contends, inter alia, demonstrated that mother had not provided adequate medical care for the children and had not provided adequate support for their educational needs, it is clear from our review of the record that the trial court discounted this evidence. On the subject of medical care, the trial court specifically concluded that (1) "[t]he evidence simply did not support" father's contention that mother was responsible for the children's having contracted strep throat; and (2) "[f]ather's contentions that [m]other is not capable

of handling the children's medical needs is not supported by credible evidence." The trial court's rejection of father's claim regarding health care is evidenced further by its conclusion and order that, in the event the parties are unable to resolve any health care issues concerning their children, mother would have the final decision on such matters.

Further, it is apparent from the substance of the order that the trial court did not accept father's position that mother had not adequately supported the children's educational needs. This is made clear from (1) the trial court's conclusion that father was "very controlling" concerning educational issues involving the children, and (2) its order that mother should have the final authority to decide such issues when they could not be resolved with father.

Moreover, although not expressly mentioned in the order, it is apparent from our review of the record that the trial court gave little or no weight to father's contention that custody should be modified because of mother's having allegedly committed an act of domestic violence in October 2012, while mother and father were still together. The court specifically questioned the relevance of the testimony, given its remoteness in time (more than four years) to the current hearing.

Finally, the trial court heard the testimony of Williams, the coparenting counsellor, who had significant familiarity with the parties based upon having had approximately 20 sessions with them. She expressed clear views that (1) both mother and father were focused on the children's best interests, (2) she had had no occasion to be concerned about the children's welfare, (3) she had not seen anything to substantiate father's complaints about mother's parenting, (4) father had dominated the coparenting sessions, and (5) father and mother would never be able to successfully coparent their children. Most significantly, Williams concluded that a change in custody as requested by father—resulting in his having sole weekday custody during the school year—would not be in the children's best interests. And while father expresses criticism of Williams's testimony,

attacking her credibility, this matter of witness credibility is within the province of the trial court, to which we defer. (*Niko*, *supra*, 144 Cal.App.4th at p. 365.)

We conclude that the trial court did not abuse its discretion in denying father's request as it "could have reasonably concluded that the order . . . advanced the 'best interest' of the child[ren]." (*In re Marriage of Burgess*, *supra*, 13 Cal.4th at p. 32.)

III. DISPOSITION

The February 7, 2017 postjudgment order denying appellant Ghassan Hage's request for order modifying prior custody and visitation order is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

_____
MIHARA, J.

_____
DANNER, J.

Mhanna v. Hage
H044493